

E-Filed 8/1/05

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CITIGROUP GLOBAL MARKETS, INC.,

Plaintiff,

v.

CARTER D. CRUM,

Defendant.

Case Number C-05-650-JF (EAI)

ORDER DENYING DEFENDANT'S
EX PARTE APPLICATION FOR
CONTINUANCE OF ARBITRATION

[Docket No. 33]

In this action, Plaintiff Citigroup Global Markets, Inc., referred to herein as "Smith Barney," sues a former employee, Defendant Carter D. Crum ("Crum"), for breach of contract, misappropriation of trade secrets and related claims. Crum joined Smith Barney as a financial consultant in August 1999. He resigned without prior notice in early January 2005 and later the same day began employment with one of Smith Barney's competitors, Nollenberger Capital Partners, Inc. ("Nollenberger"). Smith Barney filed the complaint in this action on February 11, 2005, alleging that Crum used Smith Barney's proprietary and confidential customer information to solicit Smith Barney customers to transfer their accounts to Nollenberger.

On February 17, 2005, this Court granted in part Smith Barney's application for a temporary restraining order and on February 28, 2005, the Court granted in part Smith Barney's

1 application for a preliminary injunction and granted Smith Barney's motion for leave to conduct
2 expedited discovery. The parties have been in the process of conducting discovery since that
3 time.

4 In April, 2005, the parties submitted the matter to the National Association of Securities
5 Dealers ("NASD") for binding arbitration. The actual arbitration date was not scheduled at that
6 time, however. On July 22, the parties submitted to the Court a joint stipulation indicating that
7 they had selected NASD arbitration as their ADR process. Under the NASD procedures, an
8 arbitration hearing is set within fifteen days after either party requests such hearing. Smith
9 Barney requested an arbitration hearing on July 18, 2005. The NASD has notified the parties that
10 it has set an arbitration hearing for August 3, 2005.

11 On July 18, 2005, the same day Smith Barney made its request for an arbitration hearing,
12 Crum filed a motion to compel depositions and production of documents in this Court. Crum
13 asserts that this discovery is necessary to prepare for the arbitration, and requests that this Court
14 continue the arbitration for two months. Smith Barney will not stipulate to a continuance.

15 The Court concludes that Crum's request for continuance properly should be made to the
16 NASD. The parties have stipulated to submit themselves to NASD arbitration under that
17 organization's procedures. Crum has failed to cite any authority in support of his request that
18 this Court interject itself into those procedures. Accordingly, Crum's motions is DENIED
19 WITHOUT PREJUDICE to the presentation of a motion for continuance to the NASD or the
20 arbitrator assigned to the matter.

21 IT IS SO ORDERED.

22
23 DATED: August 1, 2005

/s/ electronic signature authorized

24
25 JEREMY FOGEL

United States District Judge
26
27
28

1 This Order was served on the following persons:

2
3 Howard O. Boltz , Jr hoboltz@bryancave.com,

4 Charles M. Louderback akay@louderback.org,
5 jschreibstein@louderback.org;ehoffman@louderback.org;jhudson@louderback.org;mlopez@lou
derback.org;malarcon@louderback.org;bfrankson@louderback.org